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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

Local Exchange Carriers' Rates,  
Terms, and Conditions for  
Expanded Interconnection Through  
Virtual Collocation for Special  
Access and Switched Transport

NOV 22 1995  
CC Docket No. 94-97  
Phase II

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REBUTTAL TO OPPOSITIONS FILED  
IN RESPONSE TO THE DIRECT CASE OF  
SOUTHWESTERN BELL TELEPHONE COMPANY

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## SUMMARY\*

SWBT's Rebuttal refutes the various oppositions filed against its Direct Case and again demonstrates that its virtual collocation tariffs are lawful, just, and reasonable in all respects. Notwithstanding claims in the oppositions, SWBT has fully complied with all requirements of the Virtual Collocation Order.

In reviewing the virtual collocation tariffs, the Commission should dismiss the requests made by interconnectors that it re-write the tariffs so that LECs act as underwriters of any interconnector's business. Each interconnector must be expected to cover the costs it incurs or causes by doing business, including virtual collocation charges. The public interest is not served by relieving interconnectors of those costs. Corresponding, the Commission must allow LECs to recover their costs of providing virtual collocation, and reject any attempt to average costs or practices across LECs.

In support of its virtual collocation tariffs and Direct Case, SWBT has provided competitively sensitive cost information that is properly exempt from public disclosure under the Freedom of Information Act. The appropriateness of that treatment is conclusively demonstrated by TCG and ALTS, which have both filed confidential information that is the same as, but only a fraction of, the proprietary cost data that SWBT has been required to file.

The Commission should ignore any claims that a "price squeeze" may occur and

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\* The abbreviations used in this Summary are as defined in the main text.

that additional information is necessary to ensure that one does not take place. Although the concept is not defined by any opposition, SWBT again explains when a price squeeze is possible. Given the manner in which the Commission set the maximum overhead recoverable by a LEC (on a percentage basis, and not on an absolute basis as should have been done), no “price squeeze” is occurring. In fact, just the opposite result occurs from the Commission’s pricing rules as SWBT is denied appropriate recovery of contribution to joint and common costs. To the extent the Commission wishes to perform the analysis, the Commission has all the information it needs from SWBT.

SWBT’s nonrecurring charges for IDE are reasonable and justified. Notwithstanding claims by interconnectors, particularly Time Warner, SWBT has not inflated its costs of IDE, but has instead used negotiated vendor costs in developing IDE rates everywhere such a negotiated price existed. SWBT’s use of a nonrecurring charges to recover those nonrecurring costs is appropriate given the differences between DS1/DS3 services and virtual collocation, the lack of desire of SWBT to finance its competitors, and the inability to forecast for IDE, the length its usage by the interconnector, or any potential reusability. A nonrecurring rate structure is simply not a barrier to entry, and provides no windfall to SWBT. SWBT also addresses MFS’ and Time Warner’s references to a stipulation in Texas.

With regard to claims regarding SWBT-standard equipment, Time Warner and KC Fibernet are simply wrong about the extent of the use of AT&T equipment. As explained, AT&T is no longer a SWBT-standard although its use is grandfathered in

some central offices. A central office-by-central office determination has to be made in each case to determine training needs. The attempt to limit training to only three technicians per central office is unreasonable, and would result in SWBT being unable to recover the costs incurred in meeting the Commission's interval standard.

Contrary to the assertions made by interconnectors, SWBT is indeed willing to purchase IDE from interconnectors, at any price that the interconnector sets (including \$1), so long as the interconnector meets SWBT's vendor/equipment requirements and standards. In those instances, the nonrecurring IDE rate charged to the interconnector will be the price set by the interconnector plus the overhead and direct cost amounts embedded in SWBT's equivalent nonrecurring rates. In similar fashion, SWBT's tariff language that places parameters around what falls within the concept of IDE is consistent with the Virtual Collocation Order.

MCI's arguments regarding SWBT's recovery for floor space is refuted, as well as MCI's attempt to dictate a cost of money in calculating rates.

MFS' request for term and volume discounts is unreasonable, in part because the manner in which the virtual collocation rates were set gives interconnectors the benefit of an overhead factor derived from a discounted plan. MFS simply wants an additional discount on top of an already unreasonably low rate.

The Commission should reject the arguments that any more tariffs are needed. SWBT does not tariff provisioning, repair, and maintenance intervals for DS1/DS3 services, and it would be unreasonable and expensive to require any such tariffs for

not given to SWBT DS1/DS3 customers. Moreover, SWBT is unwilling to tariff an “explanation” that only refutes an unfounded allegation.

Interconnectors are also subject to additional labor charges where necessary, and are not immune from paying the costs that they cause SWBT to incur to provide virtual collocation.

The Commission should ignore attempts to have the Commission adopt further reporting requires in that those attempts are wholly unrelated to any LEC’s tariffs or direct case. Those interconnectors should be required to request rulemaking like any other person.

Finally, SWBT addresses its ACD tariff even though the Designation Order did not address those tariff filings. Nevertheless, SWBT has no objection to the Commission resolving those tariffs at this time if indeed they are resolved and will not be subject to another designation order. Interconnectors are not entitled to multiple bites of the same apple, and SWBT has a fundamental right to due process and finality. If the Commission is to issue a separate designation order for those tariff filings, the Commission should strike those portions of MFS’ and Time Warner’s oppositions.

With that in mind, SWBT again demonstrates that the use of an ACD is a standard feature in SWBT’s network and integral to its ability to meet the repair and maintenance interval requirements imposed by the Virtual Collocation Order. Contrary to the claims of Time Warner, the use of an ACD does not prevent an interconnector from remotely

controlling and monitoring IDE. Any problem created in Time Warner's particular situation in that regard has been created by Time Warner's selection of IDE. Further, SWBT does not use the ACD to perform any other activity beyond monitoring the IDE for purposes of repair and maintenance. Finally, a dedicated ACD is used for both SWBT and interconnector network security concerns, but SWBT has no objection to introducing a shared ACD if actual demand is demonstrated and SWBT is relieved of any possible liability or responsibility arising from such shared use.

## TABLE OF CONTENTS

I.	INTRODUCTION .....	-2-
II.	SWBT'S COST INFORMATION IS COMPETITIVELY SENSITIVE AND BY LAW IS SUBJECT TO CONFIDENTIAL TREATMENT .....	-3-
III.	THE ARGUMENTS BASED UPON A PURPORTED "PRICE SQUEEZE" ARE BASED ON MISSTATED AND MISAPPLIED ECONOMIC THEORY .....	-6-
IV.	THE INTERCONNECTOR AS CUSTOMER .....	-12-
V.	THE ATTEMPT TO USE A HERETOFORE UNKNOWN FORM OF RATE AVERAGING SHOULD BE SUMMARILY REJECTED .....	-13-
VI.	INTERCONNECTOR CLAIMS REGARDING INFLATED IDE COSTS ARE WRONG .....	-15-
VII.	TIME WARNER IS ABSOLUTELY WRONG CONCERNING SWBT'S USE OF VENDOR IDE PRICES, AS ELSEWHERE ACKNOWLEDGED BY TIME WARNER .....	-16-
VIII.	NONRECURRING CHARGES FOR INTERCONNECTOR-DESIGNATED EQUIPMENT ARE DEMONSTRABLY JUST AND REASONABLE .....	-21-
IX.	SWBT IS INDEED WILLING TO PURCHASE IDE FROM INTERCONNECTORS .....	-32-
X.	SWBT FULFILLS ITS OBLIGATION TO ACCEPT IDE SPECIFIED BY INTERCONNECTORS .....	-34-
XI.	SOUTHWESTERN BELL RECOVERS FLOOR SPACE AS A DIRECT COST, NOT AN OVERHEAD .....	-36-
XII.	MCI'S MISREPRESENTATION ON THE COST OF MONEY .....	-37-
XIII.	VOLUME AND TERM DISCOUNTS ARE NOT APPROPRIATE FOR VIRTUAL COLLOCATION ARRANGEMENTS .....	-38-

XIV.	SWBT'S REQUIREMENT THAT INTERCONNECTORS PAY ESTIMATED NONRECURRING CHARGES BEFORE TURNING UP VIRTUAL COLLOCATION ARRANGEMENTS IS REASONABLE .....	-39-
XV.	SWBT'S INSTALLATION PROCEDURES COMPLY WITH THE <u>VIRTUAL COLLOCATION ORDER</u> AND ARE JUST AND REASONABLE .....	-42-
XVI.	SWBT'S TRAINING METHODS AND COSTS ARE REASONABLE ....	-43-
XVII.	CONTRARY TO CLAIMS MADE BY TIME WARNER AND KC FIBERNET, AT&T IS NOT SWBT'S STANDARD .....	-46-
XVIII.	TARIFFED PROVISIONING, REPAIR, AND MAINTENANCE INTERVALS ARE NEITHER NECESSARY NOR REASONABLE .....	-48-
XIX.	SWBT SHOULD NOT BE REQUIRED TO TARIFF SUPERFLUOUS ITEMS .....	-50-
XX.	AN INTERCONNECTOR IS SUBJECT TO ADDITIONAL LABOR CHARGES WHEN CAUSED BY THAT INTERCONNECTOR .....	-51-
XXI.	ATTEMPTS TO RAISE ISSUES WHOLLY UNRELATED TO ANY DIRECT CASE OR THE <u>DESIGNATION ORDER</u> MUST BE IGNORED .....	-52-
XXII.	THE COMMISSION SHOULD NOT ADDRESS ANY ACD ISSUES UNLESS IT INTENDS TO RESOLVE THEM AT THIS PHASE OF THE PROCEEDING .....	-55-
XXIII.	THE NEED FOR AN ACD HAS BEEN DEMONSTRATED AND IS REASONABLE .....	-56-
XXIV.	AN ACD IS NEEDED TO MONITOR ALL IDE IN ORDER TO MEET THE REQUIREMENTS OF THE <u>VIRTUAL COLLOCATION ORDER</u> .....	-57-
XXV.	THE USE OF AN ACD DOES NOT PREVENT AN INTERCONNECTOR FROM REMOTELY MONITORING AND CONTROLLING IDE OR THE INTERCONNECTOR'S OWN NETWORK .....	-59-
XXVI.	THE ACD IS NOT USED TO MONITOR ANY INTERCONNECTOR'S NETWORK .....	-64-



XXVII. SWBT HAS NO OBJECTION TO SHARED ACDS UNDER APPROPRIATE TERMS AND CONDITIONS IF DEMAND EXISTS .....	-65-
XXVIII. CONCLUSION .....	-68-

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Virtual Collocation for Special	)	
Access and Switched Transport	)	

**REBUTTAL TO OPPOSITIONS FILED IN RESPONSE TO THE  
DIRECT CASE OF SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company ("Southwestern Bell" or "SWBT"), by its attorneys, files this Rebuttal to the oppositions to SWBT's Direct Case filed pursuant to the Order Designating Issues for Investigation.<sup>1</sup> SWBT appreciates the additional time provided by the Bureau to respond to those oppositions. Given the number and the length of oppositions, with the many issues raised, SWBT could not have completed this Rebuttal without the extension. With the ability to respond, SWBT proves that the criticisms made in those oppositions have no validity. Moreover, SWBT forcefully denies each one of the words used in the bare allegation of "concerted monopoly

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<sup>1</sup> *Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, CC Docket No. 94-97, Phase II (DA 95-2001), Order Designating Issues for Investigation, (Com. Car. Bur., released September 19, 1995), as modified by Order (released October 17, 1995) and Order (released November 8, 1995) (collectively, "Designation Order").

defiance.”<sup>2</sup> SWBT’s virtual collocation tariffs comply fully with the Virtual Collocation Order<sup>3</sup> and are lawful, just, and reasonable in all respects.

## **I. INTRODUCTION**

The Virtual Collocation Order required that certain local exchange carriers (“LECs”), including SWBT, file tariffs for virtual collocation on September 1, 1994, to be effective December 15, 1994. Those LECs were required to base these tariffs on equipment requested by interconnectors by July 31, 1994.<sup>4</sup> Thirty-six days later, on September 1, 1994, SWBT filed both interim and ongoing virtual collocation tariffs, under protest.

The sole issue before the Commission is the reasonableness of LEC virtual collocation tariffs. Although SWBT has already demonstrated the reasonableness of its tariffs, further elaboration and explanation is provided here to address the criticisms in the oppositions. In reviewing those tariffs, the Commission should work to ensure that economical competition is assured, and not work to sustain any individual competitor. KC Fibernet’s doomsday threat that it will have to exit the business unless the Commission drastically re-writes SWBT’s tariffs is clearly irrelevant to the validity of

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<sup>2</sup> Association for Local Telecommunications Services (“ALTS”) at 6.

<sup>3</sup> Memorandum Opinion and Order, CC Docket No. 91-141, FCC 94-190 (released July 25, 1994) (“Virtual Collocation Order”).

<sup>4</sup> Interconnectors were also allowed to request that equipment be made available in the LECs’ tariffs by August 31, 1994, to be added by October 4, 1994.

SWBT's tariffs. If KC Fibernet or any other interconnector cannot cover the costs it causes by doing business (including the cost of virtual collocation arrangements) and be sufficiently profitable, the Commission should not rig the system such that SWBT or any other LEC is required to underwrite the operations of their competitors. Contrary to MCI's characterization of SWBT's Direct Case,<sup>5</sup> each competitor must be required to recover its costs from its own customers, not from its competitors. Any other type of "competition" does not provide any public benefit, nor serve any interest except the private interests of the interconnector. KC Fibernet is wrong when it asserts that the public is served by such underwritten "competition,"<sup>6</sup> the real losers will be those SWBT customers who are forced to pick up the costs of virtual collocation not recovered from interconnectors, all for the private benefit accorded interconnectors and their customers.

## **II. SWBT'S COST INFORMATION IS COMPETITIVELY SENSITIVE AND BY LAW IS SUBJECT TO CONFIDENTIAL TREATMENT**

Once again, various complaints are made about the confidential nature of SWBT's cost information. By now, the Commission must be quite bored with the shop-worn arguments of MCI and others that continue to argue to no avail that SWBT's cost information should be made freely available to the public. Those parties are of course wrong. Indeed, the attempts by competitors to argue that the information is not competitively sensitive rings extremely hollow given that those same competitors have

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<sup>5</sup> MCI at 21.

<sup>6</sup> KC Fibernet at 11.

successfully and unlawfully resisted filing rates on anything but an individual case basis (and even then without identifying any location, terms, conditions, or even the specific customer). Those competitors (MCI included) have never filed any cost information with the Commission to SWBT's knowledge, but nevertheless want unfettered access to SWBT's. Each confuses their private interests with the public interest. The Commission should continue to refuse to allow the tariff review process to be used to perform competitive analysis and industrial espionage.

However, rather than re-argue already repetitive points, a single act by Teleport Communications Group ("TCG"), which follows a similar action by ALTS,<sup>7</sup> speaks volumes. In an attempt to prove its allegation that SWBT's IDE charges are inflated, TCG intends to provide the Commission with the actual costs of virtual collocation equipment "on a confidential basis."<sup>8</sup> Notwithstanding TCG's own arguments dismissing the confidentiality of SWBT's costs and the need for public review of such information,<sup>9</sup> the attempt by ALTS to denigrate SWBT's need and efforts to keep IDE costs

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<sup>7</sup> See "Petition to Suspend and Investigate by the Association for Local Telecommunications Services," filed on October 14, 1994, in response to the LECs' virtual collocation tariffs.

<sup>8</sup> TCG at 3 (emphasis added).

<sup>9</sup> See TCG at 2, 3 (SWBT "has consistently filed key cost support material on a confidential basis, and its Direct Case herein continues to withhold important information from public view."); TCG's "Opposition to Request of Southwestern Bell Company for Confidentiality," filed September 14, 1994, in response to SWBT's tariff filing.

confidential,<sup>10</sup> and MCI's incessant attempts to gain unrestricted access to SWBT's costs, TCG wants to protect its own, very same cost information. By its actions, TCG has conclusively demonstrated what SWBT has proven time and time again -- that cost information is highly sensitive information to which competitors should not be given access. Given what SWBT's cost information pertains to (e.g., network equipment, DS1/DS3 services), it is hardly surprising that competitors would want that information. But, as TCG has demonstrated, it should be protected and not made public..

To those interconnectors that might wish to argue that the information is not competitively sensitive and that competition does not exist, MFS likewise conclusively admits otherwise. In a bizarre attempt to somehow blame SWBT for MFS' own inaccurate forecasts and lack of planning, MFS admits that it underestimated the amount of business it would have and has already needed additional capacity in SWBT central offices where it had working virtual collocation arrangements.<sup>11</sup> MFS and the other interconnectors have demonstrated, and increasingly demonstrate every day, the ability to displace SWBT's DS1 and DS3 services with their own facilities, regardless of whether combined with virtual collocation arrangements or not. Clearly, the cost information SWBT has supplied is competitively sensitive and deserves the protections sought by SWBT.

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<sup>10</sup> ALTS at 10-12.

<sup>11</sup> MFS at 15.

Finally, the Commission should be clear about one thing -- SWBT has provided all of the cost data that has been requested. Various oppositions attempt to cast this issue into one where SWBT has not provided sufficient cost information. Although obviously false, the Commission should not allow the interconnectors to twist the perception of SWBT's adamant refusal to allow its competitors unrestricted access to competitively sensitive cost data into an unwillingness of SWBT to provide the Commission with cost data. SWBT has provided all of the cost data necessary to conclude this investigation, and the Commission should do so by reinstating SWBT's originally tariffed rates.

### **III. THE ARGUMENTS BASED UPON A PURPORTED "PRICE SQUEEZE" ARE BASED ON MISSTATED AND MISAPPLIED ECONOMIC THEORY**

ALTS argues that LECs should be forced to arbitrarily allocate the costs identified for existing DS1 and DS3 services to the categories of cost designated by the TRP Order<sup>12</sup> for virtual collocation elements. ALTS claims that "[t]he point here is both simple, and fundamental . . ."<sup>13</sup> Clearly ALTS' argument represents simple thinking but it fails to recognize the fundamental comparison that must be made when measuring virtual

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<sup>12</sup> *Commission Requirements for Cost Support Material to be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport, Tariff Review Plan Order, 9 FCC Rcd 5679 (1994) ("TRP Order").*

<sup>13</sup> ALTS at 19. ALTS also reads one designated issue that required certain LECs to "explain any differences between their recovery" of certain costs as meaning a comparison between the amounts recovered. ALTS at 18, 19. While SWBT does not believe that the issue called for that comparison, ALTS is incorrect in asserting that sufficient information was not provided.

collocation rates against the rates that LECs receive for DS1/DS3 services used to compete with virtually collocated interconnectors.

Like other parties filing in this docket, ALTS has suggested that a concern about anticompetitive “price squeezes” is the proper basis for the Commission's close examination of LEC costs for DS1 and DS3 services.<sup>14</sup> SWBT has already demonstrated in its Rebuttal in Phase I<sup>15</sup> that an anticompetitive price squeeze is not an issue, nor even possible.<sup>16</sup> Nevertheless, if the Commission wants to confirm that no price squeeze is occurring, it has all the information necessary to make that determination without any additional data (including the data suggested by ALTS) if the concept of a “price squeeze” is properly applied.

Neither ALTS nor TCG define what they mean by the term “price squeeze,” clearly preferring to let the concept be as broad as the reader cares to project into the nebulousness, yet foreboding label. An antitrust concept, a price squeeze is an alleged anticompetitive pricing practice that takes place when a vertically integrated input supplier charges a “high” price for the wholesale input to its downstream competitors (i.e., retail), while charging a “low” price for the competitive downstream service, hence

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<sup>14</sup> See, e.g., ALTS at 1; TCG at 2.

<sup>15</sup> *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, 10 FCC Rcd 3927 (1995).

<sup>16</sup> Rebuttal of Southwestern Bell Telephone Company, CC Docket No. 94-97, Phase I, filed April 11, 1995.



“squeezing” the profit margin out of the downstream market, and squeezing downstream competitors out as well. A “squeeze” of downstream competitors' profit margins, it is argued, is a tactic a monopolist will use when threatened with competitive entry. If the Commission fully understands how a “price squeeze” can occur, it can easily conclude that one is not occurring at any of SWBT’s virtual collocation rates, including those originally filed by SWBT but reduced by the Commission.

Assuming then that ALTS’ apparent formulation and factual predicate are correct for the sake of argument only,<sup>17</sup> arbitrarily allocating costs to rate elements is of no assistance to a properly developed test of a price squeeze. Stated in the context of virtual collocation rates, a price squeeze would only occur if the total dollar amount of contribution obtained by the LEC in selling virtual collocation to its competitors exceeds the total dollar amount of contribution obtained by the LEC from selling DS1/DS3 services. If not, then SWBT's pricing of virtual collocation does not violate the well-known efficient component-pricing rule (“ECPR”), or “Baumol-Sidak” rule for pricing;<sup>18</sup>

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<sup>17</sup> ALTS alleges that the LECs implicitly charge themselves less for input than they charge their competitors.

<sup>18</sup> WILLIAM J. BAUMOL & J. GREGORY SIDAK, TOWARD COMPETITION IN LOCAL TELEPHONY 94 (1994); and, William J. Baumol & J. Gregory Sidak, *The Pricing of Inputs Sold to Competitors*, 11 YALE J. ON REG. 171, 178 (1994) (“Baumol & Sidak, *Yale*”). The ECPR requires that the price of an upstream productive input equal its average-incremental cost, including all pertinent incremental opportunity costs (i.e., the optimal input price equals the input's direct per unit incremental cost plus the opportunity cost to the input supplier of the sale of a unit of input).

and if the Baumol-Sidak rule has not been violated, then a price squeeze cannot occur for interconnection.

The Commission has failed to recognize the benefits of setting virtual collocation rates in a way that obeys the Baumol-Sidak rule; similarly, it has failed to recognize the fact that rates in compliance with the Baumol-Sidak rule cannot be a component of a price squeeze strategy. The Commission has found that LECs may not recover any greater overhead (on a *percentage* basis) from virtual collocation than from “comparable” DS1 and DS3 services.

This formulation is fatally flawed because it fails to recognize two fundamental aspects of compliance with the Baumol-Sidak rule and its resulting safeguard against a price squeeze, namely: (1) a comparison of *total dollar* amount of contribution to overhead is required (not *percentage* contribution to overhead), and (2) *total dollar* contribution to overhead from the retail sale must be used (not some arbitrary part of the contribution from the retail sale). While using the Baumol-Sidak rule for pricing interconnection would be economically efficient and ensure that a price squeeze cannot take place, it is simply wrong to apply the ECPR rule in percentage terms.<sup>19</sup> It is only correct when stated in terms of absolute dollar amounts and, as correctly stated, SWBT’s virtual collocation rates have not violated that rule.

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<sup>19</sup> There is perhaps a more understandable way of restating the Baumol-Sidak rule: the dollar amount of contribution from the wholesale service should equal the dollar amount of contribution from the retail service. If that condition holds, then the Baumol-Sidak rule holds, there is no price squeeze, and interconnection rates are efficient.

The Commission's reliance on percentages has resulted in the construction of a much stricter distortion of the Baumol-Sidak rule: one in which SWBT *cannot* earn contribution from the wholesale service as great (in absolute dollar terms) as that earned from the retail service. A truly efficient pricing rule that prevents price squeezes would also allow SWBT to earn as much contribution from the wholesale service as the retail service. LECs have needlessly been prevented from following the Baumol-Sidak efficient pricing rule. Adherence to such an efficient pricing rule is not new and has been used by the California Public Utility Commission,<sup>20</sup> widely seen as one of the most progressive State commissions in encouraging competition.

Due to the lack of an ability to use ECPR, SWBT is unable to earn an appropriate level of contribution from virtual collocation. Where the Baumol-Sidak rule makes the incumbent LEC indifferent to selling the retail service or the wholesale service, the formulation of the rule and pricing standards adopted by the Commission assures that the LEC cannot be indifferent between those two sales.

What SWBT finds ironic here is that virtual collocation rates should be far higher than those the Commission mandated in the Phase I Order, and those that ALTS and TCG nevertheless find too high, and yet still be economically efficient. As Baumol and Sidak

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<sup>20</sup> See, e.g., REGULATION OF ACCESS TO VERTICALLY-INTEGRATED NATURAL MONOPOLIES: A DISCUSSION PAPER (New Zealand Ministry of Commerce, Treasury)(Aug. 1995); William J. Baumol & J. Gregory Sidak, *The Pricing of Inputs Sold to Competitors: Rejoinder and Epilogue*, 12 YALE J. ON REG. 177 (1995); and, James Farmer, *Transition from Protected Monopoly to Competition: The New Zealand Experiment*, 1 COMPETITION & CONSUMER L.J. 1 (1993).

have pointed out, “. . . the efficient component-pricing rule offers the prospect of success to entrants who can add efficiency to the supply of the final product, while it ensures that inefficient entrants are not made profitable by an implicit cross-subsidy extracted from the incumbent.”<sup>21</sup> It is clear that “high” rates, in the eyes of ALTS and TCG, can also be efficient rates that obey the ECPR, and not part of a price squeeze strategy.

If the Commission is truly interested in establishing rates for virtual collocation which allow full and fair competition to develop, then the Commission must apply pricing standards that not only prevent an anticompetitive price squeeze from occurring,<sup>22</sup> but that also avoid misapplication of ECPR. If the Commission were to apply the ECPR properly, it would conclude that the rates originally filed by SWBT for virtual collocation

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<sup>21</sup> Baumol & Sidak, *Yale*, *supra* note 18.

<sup>22</sup> In fact, antitrust litigation over “price squeezes” are virtually unknown outside of the electric utility industry, which appears to have been spurred over the only plaintiff’s verdict based on a “price squeeze” affirmed at the appellate level. Federal Power Commission v. Conway, 426 U.S. 271 (1976). The recent handling of price squeeze allegations in the courts raises serious questions about the validity of economic arguments used to support unduly low terms of access to SWBT facilities by its competitors that argue such access is “essential.” See Town of Concord v. Boston Edison Co., 915 F.2d 17 (1st Cir. 1990), *cert. denied*, 111 S. Ct. 1337 (1991). The Concord court made an economic efficiency argument, concluding that to the extent regulated prices reflect costs, an integrated utility’s prices are only likely to squeeze distributors who buy at wholesale from the utility only if those distributors operate less efficiently (i.e., at higher cost). The court thus concluded that a rule preventing prices that create a squeeze will more likely discourage efficient operations and deprive consumers of prices that would be economic welfare-improving by being lower. It also rejected the plaintiff’s advocated anti-price-squeeze rule, one which required “equal profit earned at both levels” of the market (retail and wholesale), arguing that such a method would at best be the product of an arbitrary allocation of costs between the retail and wholesale sides of the market.

actually produced less contribution for the sale of virtual collocation (on a unit basis) than the rates which SWBT charges for DS1 and DS3 services. The Commission has on the record sufficient information to reach this proper conclusion.

#### **IV. THE INTERCONNECTOR AS CUSTOMER**

Interconnectors such as KC Fibernet express alarm that SWBT seems “hostile” to virtual collocation and does not go beyond the requirements of the Virtual Collocation Order to make such arrangements “friendlier.” As every participant in this proceeding is surely aware, SWBT has opposed any requirement to provide virtual collocation as defined by the Commission, firmly believes the Virtual Collocation Order to be unlawful, and has appealed that Order.

Nevertheless, there should be no mistake that SWBT has and will continue to fully comply with the Virtual Collocation Order until such time as a court may reverse it. SWBT recognizes the current validity of the Order under the law, and will continue to offer virtual collocation arrangements pursuant to the requirements of that Order and any associated order so long as required to do so. SWBT did the same with physical collocation but once that Commission order was determined to be unlawful, SWBT discontinued that offering and those arrangements.

However, at the same time, no one can rationally expect that SWBT is satisfied with being compelled to offer a cut-rate pricing arrangement to its competitors that operate with much greater freedom and are under no regulatory scrutiny. By using the regulatory process and the uneven regulatory structure, competitors/interconnectors

prevent SWBT from competing fairly. Even under extraordinary circumstances when SWBT seeks a modicum of the treatment routinely given to interconnectors, those efforts are opposed and the Commission has to date consistently agreed with them. Given that SWBT cannot afford to be indifferent between virtual collocation arrangements and DS1/DS3 services, in that the amounts of contribution each generates are vastly different due to a Commission-mandated pricing structure, it is fair to say that SWBT is dissatisfied with virtual collocation on the whole. While SWBT will meet its legal obligations and requirements, it is clearly under no compulsion to exceed them. SWBT can do no less for its shareholders and customers who are increasingly asked to bear a greater burden as implicit universal service support is lost to uneven and unfair competition.

**V. THE ATTEMPT TO USE A HERETOFORE UNKNOWN FORM OF RATE AVERAGING SHOULD BE SUMMARILY REJECTED**

In an attempt to get to the least cost denominator, various interconnectors urge the Commission to selectively pick and choose among the practices and costs of the LECs required to provide virtual collocation arrangements, and require each LEC to conform in each area to that practice most preferred by the interconnectors and, further, only be allowed to recover the lowest cost of any LEC in the performance thereof. The most naked and absurd formulation of this attempt is the prayer by ALTS to

Order the five RBOCs which do not provide physical collocation to immediately refile their virtual collocation tariffs to reflect total direct costs

which are no higher than the lowest total for such costs filed by a Tier 1 carrier . . .<sup>23</sup>

Not only does this reveal the belief by interconnectors that the virtual collocation standards should be made and applied to punish those LECs (particularly Bell Operating Companies like SWBT) that exercise their lawful rights, the confiscatory nature of the suggestion is apparent. SWBT is allowed, by law and by the Virtual Collocation Order,<sup>24</sup> to recover its costs of providing virtual collocation arrangements. Those costs have been fully demonstrated in SWBT's tariff filings, its Phase I filings and its Direct Case. Any attempt to deny SWBT the recovery of those costs would be blatantly unlawful.

While not as obvious as ALTS, some interconnectors essentially make the same argument but with more subtlety. An example of this type of stealth is the argument made by MCI and MFS that every LEC should only be able to recover for the training costs of three technicians per central office per non-standard IDE because that is U S West's number. As explained in the Direct Case and elaborated on in this Rebuttal, SWBT must determine on a central office-by-central office basis the number of technicians that must be trained in order to meet the intervals ordered by the Commission. Sometimes that will be none, sometimes three or less, and sometimes more. The interconnectors' unspoken response to SWBT is no matter -- the LEC should only be able to recover for three, should nevertheless be held to the same intervals as its non-IDE

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<sup>23</sup> ALTS at 30.

<sup>24</sup> Virtual Collocation Order, at para. 30.

equipment, and, if the LEC has to train more than three, should just eat the rest of its costs of meeting the Commission-imposed standard. Unless SWBT is relieved from that interval requirement, SWBT will be denied recovery of necessary training costs.

While MCI and MFS take a route that has a friendlier, more reasonable appearance, they reach the same denial-of-cost-recovery destination as ALTS. As the Commission evaluates the comments and suggestions contained in the oppositions, the Commission must not be seduced into adopting a position that dictates how a LEC manages its own network or that denies any LEC the ability to recover its particular costs. Such a result would be confiscatory, arbitrary, capricious, abusive, and otherwise unlawful.

## **VI. INTERCONNECTOR CLAIMS REGARDING INFLATED IDE COSTS ARE WRONG**

Whether in the press or before the Commission, the interconnectors constantly allege that SWBT is currently charging up to four times its cost of IDE. The Commission knows that is totally untrue, and SWBT urges the Commission to place this issue at rest for once and for all. For that reason, SWBT welcomes the Commission's comparison of the confidential cost information already submitted by SWBT with the confidential cost information now being provided by TCG.

In performing the comparison, the Commission should ensure itself that apples are being compared to apples, oranges to oranges. It is just such a failure to do that type of



comparison that renders MCI's LEC price-out analysis useless.<sup>25</sup> MCI compares the nonrecurring charge with the market-based cost of the IDE to nonrecurring charges of LECs that have adopted the \$1 purchase/resale, does some simple math to arrive at a percentage that is apparently hoped to be both eye-catching and blinding, and exclaims almost breathlessly that SWBT's nonrecurring charges are excessive. Because of the inclusion of the actual, market cost of the IDE in SWBT's rates, no one should be surprised that those rates exceed other rates that do not include the principal expense of a virtual collocation arrangement.

The Commission should obviously not waste its time in doing the same type of "analysis." SWBT's nonrecurring IDE charges include the cost of the equipment, shipping, engineering, labor, and the other various direct costs associated with the IDE. Given the detail in SWBT's cost studies provided to the Commission, a straightforward comparison with whatever information TCG is providing will be possible assuming similar granularity in TCG's information.

**VII. TIME WARNER IS ABSOLUTELY WRONG CONCERNING SWBT'S USE OF VENDOR IDE PRICES, AS ELSEWHERE ACKNOWLEDGED BY TIME WARNER**

As in SWBT's Direct Case, interconnectors get the benefit of any SWBT negotiated, below-list prices since those prices are used as the direct cost for the IDE in SWBT's rates. That fact is clearly and indisputably stated in the letters Time Warner

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<sup>25</sup> MCI at 11.